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Chairman: Mr. Butagira ..... (Uganda)
later: Mr. Anshor (Vice-Chairman) ..... (Indonesia)

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* Items which the Committee has decided to consider together.

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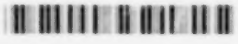

The meeting was called to order at 10.10 a.m.

Agenda item 71: Human rights questions (*continued*) (A/60/40, 44, 129, 336 and 392 and A/60/408-S/2005/626)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/60/134, 266, 272, 286, 299, 301, 301/Add.1, 305, 321, 326, 333, 338, 338/Corr.1, 339, 339/Corr.1, 340, 348, 350, 353, 357, 374, 384, 392, 399 and 431)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/60/221, 271, 306, 324, 349, 354, 356, 359, 367, 370, 395 and 422)

(e) Report of the United Nations High Commissioner for Human Rights (*continued*) (A/60/36 and 343)

1. **Ms. Jilani** (Special Representative of the Secretary-General on the situation of human rights defenders) said that her report (A/60/339) focused on the fundamental role of human rights defenders in the preservation and restoration of peace and security. To be effective, international peace and security strategies must give particular attention to protecting the situation of human rights defenders and to harnessing their work in all initiatives taken in that context.

2. The work of human rights defenders contributed to achieving the objectives of resolutions adopted by the Security Council and the Commission on Human Rights in many ways. Defenders provided an early warning of emerging problems and helped prevent them from deteriorating further. They played a crucial role in providing accurate information on the situation on the ground during the conflict, while protecting the lives of civilians and providing relief.

3. Defenders often conducted dangerous missions in barely accessible regions to interview victims and witnesses of human rights abuses and to conduct investigations. In some situations, their activities provided the only restraint on the behaviour of combatants and the only means for the international community to remain updated on developments in an armed conflict. Human rights defenders provided vital humanitarian assistance in the midst of conflicts. Without their help, millions of people would be much more vulnerable to violations of their basic rights to life, physical integrity, freedom, food and shelter.

4. Human rights defenders also played an important role during the transition from conflict to peace. Their reporting provided information on the evolving situation and helped to make Governments accountable. The defenders were instrumental in strengthening legislation, lobbying Governments for early ratification of human rights instruments and providing expertise on the compliance of new laws with human rights. They also helped to re-establish the rule of law and end impunity by providing legal assistance to victims, particularly with respect to their participation in truth and reconciliation processes.

5. During the course of their work, the defenders themselves sometimes became victims of killings, disappearances, torture, arbitrary arrest and detention, harassment and intimidation. They were denied access to places, people and information, and were prevented from speaking directly with witnesses and violations. When defenders were prevented from conducting their work, the peace and security objectives of the United Nations were less likely to be attained.

6. It was discouraging to observe that the protection of human rights defenders and their work was still not adequately emphasized within the United Nations system. The report included a series of recommendations to States, the United Nations Secretariat and the specialized agencies on how to further enhance the ability of human rights defenders to fulfil their important role. In the context of their mandates on peace and security and human rights, the Security Council and Commission must recognize the grave implications of repressive acts directed against human rights defenders.

7. **Mr. Meyer** (Brazil) wished to know how the role of civil society could be expanded to help the Special Representative in her work.

8. **Ms. Hart** (Canada) wondered what had contributed to the progress achieved thus far and wished to know the causes of the lack of coordination between United Nations personnel and human rights defenders.

9. **Ms. Hall** (United Kingdom), speaking on behalf of the European Union, asked what could be done to

improve the independent monitoring of new legislation imposed by some States in the name of counter-terrorism. With regard to the new restrictions in many countries on freedom of assembly and association, she wondered whether the elaboration of model laws on freedom of association and the right to register and receive funding could be helpful to ensure the greatest possible freedom of action for human rights defenders.

10. She also wished to know what measures States could adopt to enhance the capacity of human rights defenders as an early warning system and what steps the international community could take to help end impunity for attacks on defenders. Finally, she wondered what role the mechanism on human rights defenders should play within the context of the United Nations reform and what the minimum institutional requirements were for such a mechanism to operate effectively and in close cooperation with the overall human rights machinery.

11. **Ms. Jilani** (Special Representative of the Secretary-General on the situation of human rights defenders), in response to the questions raised, said that civil society organizations played an important role in the transfer and verification of information. The main problem was that such organizations were often denied access to information and places where violations had occurred. Lack of cooperation from Governments, especially with regard to establishing a dialogue with the organizations, was also a concern.

12. The question of the promotion and protection of human rights defenders had become more visible with the adoption of the Declaration on human rights defenders. She particularly appreciated the adoption of the European Union's guidelines on human rights defenders and hoped that they would help ease the defenders' situation. Although it was encouraging that some parliaments had passed declarations in support of human rights defenders, she was concerned that certain institutions, such as the judiciary, did not recognize the value and legitimacy of the work being done by human rights defenders and had not taken measures to protect them.

13. Turning to the question on the independent monitoring of new legislation within the context of counter-terrorism, she stressed that counter-terrorist measures were indeed obstructing the work of human rights defenders, particularly with regard to the right to a fair trial. The expertise of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism would be invaluable in the monitoring of new legislation. Counter-terrorist measures should be assessed not only in terms of their impact on security but also in terms of their compliance with the rule of law and human rights standards. Civil society organizations also had a fundamental role to play in that regard.

14. With respect to freedom of association and assembly, her previous report had made certain recommendations on model legislation that would guarantee that human rights defenders could carry out their functions and form networks and coalitions for their own protection. Lack of accountability seriously affected the work of human rights defenders and placed them at greater risk. To put an end to impunity, the international community needed to continue monitoring the situation and hold Governments accountable. The role of the human rights defenders mechanism was not only to look at individual cases but also to examine the social, economic and political conditions in which human rights violations were taking place. Unfortunately, lack of resources to carry out initiatives and provide effective protection and follow-up was an ongoing problem.

15. **Ms. Fontana** (Switzerland) pointed out that there was often a lack of interaction between human rights defenders and United Nations country teams. She wondered whether a clearer policy on the protection of human rights defenders might improve the situation.

16. **Ms. Ajamay** (Norway) asked how the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the field offices could contribute to strengthening the protection of human rights defenders.

17. **Ms. Jilani** (Special Representative of the Secretary-General on the situation of human rights defenders) said that the field offices played an important role in that they received direct information from the human rights defenders on the ground. When United Nations agencies received such information, they had a responsibility to respond. If it was not within their mandate to do so, the agency in question should pass the information on to the relevant United Nations bodies. It was important that OHCHR involve civil society organizations in its programmes so that

Governments would realize the legitimacy and value of their work.

18. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), introducing his report (A/60/316), said that the main part of the report concerned corporal punishment and the principle of non-refoulement. He had intervened in response to allegations in a number of countries involving corporal punishment, such as amputation, stoning, flogging and beating. States often sought to justify such continuing practices under domestic law, including religious law, claiming that they fell outside the prohibition against torture as they were lawfully sanctioned punishments.

19. The term "lawful sanctions" in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be interpreted as referring both to domestic and international law. Since international human rights law, in particular article 7 of the International Covenant on Civil and Political Rights prohibited corporal punishment, the so-called "lawful-sanctions" clause in article 1 of the Convention could no longer be invoked by any Government to justify corporal punishment. He therefore called upon States to abolish all forms of corporal punishment without delay.

20. He noted with concern the erosion of the absolute prohibition of torture in the context of counter-terrorism measures, particularly the rise in practices that undermined the principle of non-refoulement. Several Governments, in the fight against terrorism, had transferred or proposed to return alleged terrorist suspects to countries where they might be at risk of torture or ill-treatment, invoking diplomatic assurances that the suspects' right would be safeguarded. In his report, he had analysed the Committee against Torture case of *Agiza v. Sweden* and concluded that diplomatic assurances were unreliable and ineffective in protecting against torture and ill-treatment.

21. Diplomatic assurances were usually sought from States where the practice of torture was systematic. Such agreements were not legally binding, and the prisoners in question had no legal recourse if assurances were violated. Moreover, rather than requesting the Governments concerned to allow a genuine system for monitoring all places of detention and to stop the practice of torture, diplomatic assurances basically attempted to provide for a special bilateral protection and monitoring regime and undermined the multilateral protection system under the Covenant and Convention. He, therefore, called upon Governments to refrain from requesting diplomatic assurances related to the prohibition of torture, observe the principle of non-refoulement scrupulously, and refrain from expelling any person to a country where there were substantial grounds for believing that he or she would be in danger of being subjected to torture.

22. The methodology of his country visits included the possibility of conducting unannounced visits to any place of detention and speaking with detainees in private, as well as any other relevant persons and organizations, in addition to receiving assurances from the authorities that the persons with whom he met would not be subject to any form of reprisals. In February 2005 he had visited Georgia, which he considered to be a model example, and was grateful for the full cooperation and assistance extended by the Government. He had concluded that torture persisted in Georgia and was perpetuated by a culture of impunity. He had also visited the territories of Abkhazia and South Ossetia, where the detention conditions were of particular concern. Following his visit, he had been informed of a number of developments in line with his preliminary recommendations, including amendments to the Criminal Code to bring the definition of torture into line with the Convention against Torture, amendments to the Criminal Procedure Code and the ratification of the Optional Protocol to the Convention against Torture.

23. He had undertaken a visit to Mongolia in June. He expressed his appreciation to the Government for the invitation, but regretted that he had been denied any information relating to the practice of capital punishment, including access to prisoners on death row, in clear violation of his terms of reference. He had found that torture persisted in police stations and pre-trial detention facilities. Indeed, in one case in which he had intervened, an individual had died as a result of being severely beaten in police custody shortly before his arrival in the country. Impunity went unimpeded because of the absence of a definition of torture in line with the Convention, the lack of effective mechanisms to receive and investigate allegations and a basic lack of awareness of the standards relating to the prohibition against torture on the part of prosecutors, lawyers and the judiciary.

24. Among his most serious concerns was the situation of prisoners sentenced to the special isolation regime, where they served 30-year sentences in virtual total isolation. The complete secrecy surrounding the death penalty was also of concern. There were no official data available on the death penalty, and families of condemned persons were not notified of the date and place of execution and did not receive the bodies for burial. Moreover, the conditions of death-row prisoners, who were held in total isolation, continuously handcuffed and shackled and denied adequate food, could only be qualified as torture.

25. His visit to Nepal had taken place in September. He noted with satisfaction that the Nepalese Government had fully complied with the terms of reference for the visit. He had found torture to be systematic and practised by the police forces and the Royal Nepalese Army. In fact, he had received repeated and disturbingly frank admissions by senior police and military officials that torture had been acceptable in some instances and had indeed been practised systematically. He had also received shocking evidence of torture and mutilation carried out by the Maoists for purposes of extortion, punishment for non-cooperation and intimidation.

26. The link between involuntary disappearances and torture in Nepal was starkly illustrated by preventive detention laws with illusory safeguards that gave the police and the military sweeping powers to detain suspects, sometimes for months on end. Many detainees were tortured to force them to confess to involvement in Maoist activities. He noted with deep concern that impunity for acts of torture was institutionalized in a system where perpetrators were merely subject to demotions, suspensions and fines, or delayed promotions, and victims might be eligible for token awards of compensation.

27. His visit to the People's Republic of China would take place from 21 November to 2 December 2005. He was grateful to the Chinese Government for having accepted the terms of reference and for the commitment and cooperation which it had shown in the preparation of the mission, which, in addition to Beijing, would include visits to Tibet, Xinjiang, and Shandong provinces. In June 2005, the commencement of an investigation regarding the situation of the detainees in Guantanamo Bay had been announced. He was grateful to the United States Government for having recently answered a detailed questionnaire and was confident that an official invitation by the United States would soon be forthcoming.

28. In closing, he called upon all States which had not done so to ratify without delay the Optional Protocol to the Convention against Torture. He offered his assistance to Governments in establishing truly independent national preventive mechanisms, and hoped to make further country visits, inter alia, to Bolivia, Côte d'Ivoire, Mexico, Paraguay and the Russian Federation, in the near future.

29. **Mr. Saeed** (Yemen) said that he was surprised to see his Government's name mentioned in the Special Rapporteur's report in connection with the practice of torture. That practice was forbidden under the sharia-inspired Yemeni Constitution, adopted by national referendum. The practices referred to involved the enforcement of laws to prevent crimes. He called on the Special Rapporteur to provide more objective information and to show greater respect for the various cultures and religions of countries.

30. **Mr. La** Yifan (China) said that his Government was preparing for the forthcoming visit by the Special Rapporteur and trusted that his expertise would enhance national efforts to combat torture. The prohibition against torture was non-negotiable, and no country openly sought to justify the practice. There had been dissenting voices, however, among Governments and the media concerning the absolute prohibition against torture. Some had argued that unconventional methods of interrogation might be applied under special circumstances to save the lives of civilians. He would welcome further comment on such arguments.

31. **Mr. Bhurtel** (Nepal) said that torture and other cruel, inhuman or degrading treatment or punishment had been explicitly prohibited under the Constitution of Nepal. The Special Rapporteur must not mistake the statements to the contrary made by a few individuals for State policy. His Government was committed to the implementation of the Convention against Torture, had given due consideration to the recommendations of the special procedures, to which it attached great significance, was working to establish the necessary mechanism to clarify allegations of illegal detention and torture and would continue to cooperate with the Office of the High Commissioner for Human Rights in Nepal.

32. **Ms. Hall** (United Kingdom), speaking on behalf of the European Union, said that she would appreciate

further elaboration on the response from authorities concerning access to places of detention, the conditions for operations during country visits, follow up to those visits and action taken on individual cases. She would like to know how the prohibition against corporal punishment under the Convention would extend to such punishment against children as a means of chastisement in schools. Lastly, further information would be appreciated on the specific aspects of deficient justice systems which weakened the defence against the application of torture.

33. **Mr. Amorós Núñez** (Cuba), supporting the statement by China, said that his delegation had been struck by the failure of the report to mention the widespread allegations in the press and television and by international organizations of the systematic use of torture and other cruel, inhuman or degrading treatment against hundreds of individuals in the war against terrorism. The report had only recommended that diplomatic assurances should not be applied. He would welcome further comment on recommendations which might be put to Governments accused of using torture against prisoners in the war against terror.

34. **Mr. Meyer** (Brazil) said that his delegation would welcome further elaboration on the issue of the use of corporal punishment against children.

35. **Ms. García Matos** (Bolivarian Republic of Venezuela) said that paragraph 4 of the report of the Special Rapporteur, concerning States which had not responded to his request for information on implementation of his recommendations, had erroneously included her Government. In fact, her Government had provided a series of responses to OHCHR following the previous visit, to which she drew the attention of the current Special Rapporteur. Her delegation called for objectivity and impartiality on the part of the Special Rapporteur. Her Government did not tolerate torture and was committed to punishing any persons who engaged in it and other cruel, inhuman or degrading treatment and to providing medical and psychological services to the victims of such treatment. There were currently no pending cases of torture in Venezuela.

36. **Ms. Tchitanava** (Georgia) said that her delegation appreciated the important recommendations made by the Special Rapporteur on his visit to Georgia, where he had met with the President, the Minister for Foreign Affairs and other Government officials. He had also visited several places of detention, most notably in the secessionist regions of Georgia, Abkhazia and South Ossetia. Her Government had adopted a plan of action to implement the Convention. Unfortunately, torture and other forms of inhuman and degrading treatment had continued in the secessionist regions after the end of hostilities in 1994. In the Gali district alone, some 2,000 civilians had been murdered and 600 had disappeared. The violations had occurred in the zone of responsibility of Russian peacekeepers. Although the death penalty had been abolished by the Georgian Government, the punishment was still in place in Abkhazia. Her Government called on the international community for support in the promotion and protection of human rights, including with respect to the de facto authorities in Abkhazia and South Ossetia.

37. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that he had received full cooperation from the authorities during his recent visit to Nepal and that he fully recognized their difficult situation in having to fight Maoist insurgents. He was glad to hear that they had adopted his recommendations, including putting an end to impunity.

38. Governments had an obligation not only to carry out investigations into the allegations of torture that he brought to their attention but also to inform him of their subsequent findings. He regretted that only 41 per cent of Governments had responded to his requests for investigations to date and said that he would be grateful for any support that the General Assembly could provide to ensure that Governments responded to his requests and followed up on his recommendations.

39. As far as he was aware, the Government of the Bolivarian Republic of Venezuela had never provided any follow-up information on the implementation of his recommendations since the country visit there by his predecessor. However, if he was mistaken he would ensure that his subsequent report included a correction. Member States had an obligation to respect, protect and implement human rights. Governments should therefore respect and protect those rights by outlawing corporal punishment of children in State as well as private schools. He welcomed the information that he had received from the Republic of Georgia on the actions which it had taken to comply with his various recommendations. That would be duly reflected in his subsequent report.

40. **Mr. Waso** (Iraq) said that he agreed with the findings of the Human Rights Committee that the previous regime had imposed cruel, inhuman and degrading punishments and noted that his Government had revoked all laws and decrees providing for their imposition.

41. **Ms. Ajamay** (Norway) asked the Special Rapporteur to elaborate on the criteria for assessing whether there were substantial grounds for fearing that a person returned to a country would be at risk of torture or ill-treatment and, in particular, whether the term "substantial grounds" referred to a specific or a general risk of torture or ill-treatment.

42. **Ms. Lavin** (United States of America) said that the Special Rapporteur's request to visit the detainees held in Guantanamo Bay was being given serious consideration and would be discussed further with him bilaterally. She asked what key issues the Special Rapporteur hoped to raise during his forthcoming visit to China.

43. **Mr. Carrasco** (Bolivia) asked whether the Special Rapporteur's forthcoming visit to Bolivia was linked to a specific denunciation made in Bolivia.

44. *Mr. Anshor (Indonesia), Vice-Chairman, took the Chair.*

45. **Mr. Hussain** (Pakistan) said that there was a widespread concern that special mechanisms played a role in the politicization of human rights work. He wondered whether it might be possible to wait before making public the findings of country visits, thereby giving the authorities time to react to the recommendations.

46. **Mr. Gzllal** (Libyan Arab Jamahiriya) said that his country was a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that it did not practise corporal punishment, in accordance with sharia law. Paragraph 21 of the Special Rapporteur's report (A/60/316) referred to flogging, which was recognized as a penalty for criminal offences in sharia law. While his country had acceded to the International Covenant on Civil and Political Rights, it did not interpret the provisions of the Covenant as contradicting sharia law and the Special Rapporteur must take cultural diversity into account.

47. **Mr. Alday González** (Mexico) said that cooperation was vitally important for the prevention of torture. His country, therefore, looked forward to cooperating with the Special Rapporteur on the development of an independent national mechanism for the supervision of detention centres.

48. **Ms. Enkhtsetseg** (Mongolia) said that, during the Special Rapporteur's visit to Mongolia in June 2005, he had been received by all the relevant officials and that he had had access to all the prisons and detention centres. Her Government was committed to cooperating with the Special Rapporteur and took his recommendations seriously. A number of actions had already been taken to bring national laws and procedures into line with international standards and conventions. Steps were being taken to improve prison conditions in the country, including the installation of electronic monitors, the employment of social workers in prisons and the establishment of training centres for prison officers. As a follow-up measure to the visit by the Special Rapporteur, a task force had been set up to carry out an extensive survey of human rights violations of prisoners. The task force would also propose the activities to be implemented on the basis of the Special Rapporteur's recommendations. Her Government had also provided detailed information to the Special Rapporteur on individual cases.

49. **Mr. La** Yifan (China) said that the Special Rapporteur's forthcoming visit to China was certain to include discussions on how to safeguard human rights while countering terrorism. His delegation also expressed its willingness to have an in-depth bilateral discussion with the United States following the Special Rapporteur's visit.

50. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that the main reasons why torture continued were excessive use of pre-trial detention without real judicial monitoring, the absence of effective methods to investigate allegations of torture, and the culture of impunity. According to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, there was a subjective and an objective test for assessing whether there were substantial grounds that a person to be returned to another country would face torture. The objective test determined whether there was a widespread or systematic practice of human rights violations in that country and the subjective test whether the individual concerned was personally at risk of torture. If both tests were answered in the

affirmative, there was an absolute prohibition to return the person to that country, whether or not diplomatic assurances had been received that torture would not be carried out.

51. He was grateful to the Government of the United States of America for its cooperation in answering his questionnaire and hoped that he would be granted access to its detention facilities in Guantánamo Bay. Many issues would be discussed during his visit to China, including those in the context of counter-terrorism and judicial reform measures. He and his predecessor had received a long-standing invitation to visit Bolivia, but their missions to that country had been postponed in recent years because there had been few allegations relating to human rights violations in Bolivia. Perhaps they could discuss on a bilateral basis whether a visit to Bolivia was necessary. He stressed that country visits were generally a useful tool for discussing how to prevent torture.

52. He assured the representative of Pakistan that he would endeavour to do nothing that would lead to the politicization of human rights. The procedure followed for country visits was very clear and adhered to strictly. First, he only visited a country when an official invitation had been issued by its Government, and at the end of his visit he always informed that Government and the press about his preliminary conclusions. Second, the report that he subsequently drafted was always sent to the Government concerned, which had four to six weeks to provide their comments. Finally, all those comments were duly reflected in the final report submitted to the Commission on Human Rights.

53. While cultural diversity was always taken into account, there were universal minimum standards that should not be undermined by it and with which Governments would have to comply. He welcomed the establishment of the task force in Mongolia. He had received information from the Mongolian authorities on the individual cases that he had raised and all information received from them would be duly reflected in his subsequent report.

54. **Mr. Scheinin** (Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism) said that he was conscious of the destructive effect of terrorism on the enjoyment of human rights. It posed a challenge to Governments that wished to fight effectively against terrorism while complying with human rights law. His mandate, established on the basis of a report by an independent expert, required him to support Governments and other actors in protecting and promoting human rights while efficiently countering terrorism. He had to ensure that any measures taken to that end were in compliance with human rights law, humanitarian law and refugee law. In particular, he had to remind Governments that the fight against terrorism should never cause them to depart from their obligation to respect human rights and fundamental freedoms, as they would thus themselves be playing into the hands of the terrorists.

55. His mandate was a complementary one, taking into account the considerable work already done in the area by other Special Rapporteurs or under special procedures. While targeting his own action at areas where gaps existed, he would consult and cooperate with other relevant bodies and experts, as he had already begun to do. His mandate was not, however, a mere substitute for other, inadequate procedures, but was comprehensive, embracing the combined effect of various counter-terrorism measures in respect of the full range of human rights. That meant also exploring sustainable strategies to prevent acts of terrorism, in particular by addressing their root causes, and calling for the effective protection of the human rights of victims of terrorism and their families. He had a proactive role, entailing diagnosis of problems and assistance in designing tools to fight terrorism. He would work in interaction with Governments and would, with their consent, visit their respective countries. Countries would be chosen not only in response to reports of violations but also with a view to identifying best practices, which he would compile and publish.

56. **Ms. Hall** (United Kingdom), speaking on behalf of the European Union, asked Mr. Scheinin to explain in greater detail how he would produce a compilation of best practices and indicate ways in which Governments might assist. She wished to know to what extent he would use the findings of the independent expert in his work. Referring to the Counter-Terrorism Committee, she wondered what contacts had already been established and enquired about the format for cooperation between them. She also asked him to speak about his role in regard to the implementation task force set up within the framework of the Secretary-General's global strategy for fighting terrorism. Lastly, on complementarity, could he give examples of

concrete joint activities planned with other special procedures?

57. **Mr. Hyassat** (Jordan) enquired about the legal protection afforded to suspected terrorists and whether it differed from that guaranteed in situations of armed conflict. He also asked the Special Rapporteur what he would be doing to address the question of discrimination on grounds of race or religion in the context of the fight against terrorism.

58. **Mr. Hussain** (Pakistan) welcomed the Special Rapporteur's concern about the root causes of terrorism and invited him to draw on Pakistan's experience in that area. He stressed the constraints weighing upon States in the front line of the fight against terrorism, which had to react in real time to terrorist attacks while complying with their legal obligations and at the same time to avoid harming innocent people.

59. **Ms. Fontana** (Switzerland) asked the Special Rapporteur how he would assess the human rights impact of counter-terrorism measures in the context of humanitarian law, with particular reference to the question of suicide attacks.

60. **Mr. Scheinin** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) said that best practices included the elaboration of model laws. Other elements related to: the definition of terrorism, which varied widely in national law; modification of national legislation for reasons of security or other legitimate concerns which, while barring access to a lawyer, could not suppress the right to have legal assistance; and the current trend of several States to criminalize not only direct incitement to terrorism but also indirect expressions of support, with the attendant risk of curtailing the legitimate right to freedom of expression. He referred in that connection to article 5 of the Council of Europe Convention on the Prevention of Terrorism, which perhaps went too far in restricting freedom of expression. He would indeed draw on the work of the independent expert, particularly with regard to the links between human rights law, humanitarian law and refugee law.

61. He was already in an open and constructive dialogue with the Counter-Terrorism Committee, bearing in particular on specific forms of cooperation between them. The role of that Committee was itself changing, with its human rights mandate having only recently been fully recognized. As it received reports more frequently than the human rights treaty bodies, he expected to benefit greatly from its cooperation. The Secretary-General's Global Strategy against Terrorism was not limited to reactive measures but was also concerned with prevention. He was in contact with the Strategy's implementation task force, particularly in the light of the fifth element of the Strategy, which concerned the defence of human rights. He was also in consultation with some of the other Special Rapporteurs, particularly where their mandates overlapped, and had just recently benefited from their collaboration in drafting letters to a number of States on issues within his remit.

62. The question of safeguards for suspected terrorists had been addressed by the Human Rights Committee in its General Comment 29 on derogations during a state of emergency. While article 4 of the International Covenant on Civil and Political Rights allowed derogations, article 9 thereof specified a number of non-derogable rights, making safeguards necessary, in particular to ensure access to legal assistance. As for the risk of discrimination, the trend towards tighter immigration controls in some States was leading some Governments to have recourse to the practice of "profiling" by religion or race, which did indeed entail such a risk and could result in human rights violations. His concern was essentially with the human rights not of terrorists but of innocent bystanders, including asylum-seekers, who were the primary victims of insensitive counter-terrorism measures. He would therefore be paying particular attention to the issue.

63. He agreed that the issue of the human-rights-conformity of counter-terrorism measures was delicate, noting that it continued to be addressed by the Security Council. It was wrong to approach it in terms of a hierarchy of norms; rather, an effort must be made to ensure harmony between them and, since the Charter of the United Nations was based on human rights, an essential requirement was that all such measures conform to the Charter. Lastly, referring to the interrelationship between humanitarian law, human rights law and refugee law, he said that suicide attacks were a special concern. He would benefit from the independent expert's work in that respect and would also have recourse to the idea of "fundamental standards of humanity", understood as the overlap between the various areas of law.

The meeting rose at 12.50 p.m.